

1 ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
2 JACOB D. BUNDICK, ESQ.
Nevada Bar No. 9772
3 AKERMAN SENTERFITT LLP
400 South Fourth Street, Suite 450
4 Las Vegas, Nevada 89101
Telephone: (702) 634-5000
5 Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
6 Email: jacob.bundick@akerman.com

7 *Attorneys for Bank of America Corporation;*
8 *Bank of America, National Association;*
9 *Recontrust Company, N.A., and Federal*
10 *National Mortgage Association*

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 LESLIE ARCHER; ROBERT BARFIELD,
14 ROSE BONILLA; TIMOTHY BRADLEY;
15 THAYER BURTON; TROYLETTE BURTON;
16 SPENCER CHUNG; DEIDRE CONNELL;
17 EVELYN CORRO-SAMMARCO; JACALYN
18 CURTIS; LOUIS CUSHLER; KELLEY
19 DEUTSCH; STEVEN DEUTSCH; ROGER
20 DONNER; MICHAEL DONOVAN; PAMELA
21 DONOVAN; TASHAE DUPREE; TITAN
22 EGGSTAFF; ARTHUR EINHORN; CAROL
23 EINHORN; MATTHEW FEUSTEL; ERIC
24 FITZHUGH; LEON GAUTHIER; STPHANIE
25 GOINS; JAY HA; JOAN HA; EUGENE
26 HALLETT; STEVE HASTINGS; KENNETH
27 HISCOCKS; NATALI HISCOCKS; ROSE
28 HUFFMAN; CHARLI JACOBS; RANDY
JACOBS; DIANNE KNIGHTS; JONATHAN
KNIGHTS; CASEY KORTH; KYLE KORTH;
ZUEFANG MEI; MIRELA MICULA; TYRONE
NEWTON; HOMER NICHOLS, JANELLE
OZAWA; LELAND OZAWA; CAMILLE
PATELLA; VINCENT PATELLA; BENITO
PICHARDO; CYNTHIA PUTMAN; TERRY
PUTMAN; HERMENEGILDO RAMIREZ-
SOTO; LINDA RAMIREZ-SOTO; JOELL
REED; DANNY REGENSBURG; SHAWN
RORICK; JOHN SAMMARCO; VAN
SHERMAN; SANDRA STUCKI; JOHN

Case No.: 2:11-cv-01264-JCM-LRL

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

DUFFY TAYLOR; JEANNIE THOMPSON;
JEFFREY THOMPSON; TINA TRAN;
ABDULKADIR TURA; CARLOS
VERDUZCO; BRYAN WELLS; FRANCIS
WILSON; ROBERT WILSON; LADDAWAN
WOOD; WILLIAM WOOD; LISA
YEGHIAYAN; STEVE YEGHIAYAN,

Plaintiffs.

vs.

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, NATIONAL
ASSOCIATION, BAC HOME LOANS
SERVICING, LP; RECONTRUST COMPANY,
NA; FIRST AMERICAN LOANSTAR
TRUSTEE SERVICES, LLC; CAL-WESTERN
RECONVEYANCE CORPORATION; MTC
FINANCIAL INC. d/b/a TRUSTEE CORPS;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants.

This Court held a hearing on plaintiffs' motion for preliminary injunction (Doc. No. 22) on October 5, 2011. Having considered the written submissions, and arguments of counsel at the hearing, the Court finds as follows:

Plaintiffs did not meet their burden of demonstrating that a preliminary injunction should issue. Under *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), a "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Plaintiffs did not meet these factors.

First, plaintiffs fail to establish likelihood of success on the merits. Plaintiffs plead three causes of action: (1) violation of the Nevada Deceptive Trade Practices Act, (2) Promissory Estoppel, and (3) Wrongful Foreclosure. They are unlikely to succeed on their claim for violation of the Nevada Deceptive Trade Practices (codified at Nev. Rev. Stat. Ch. 598) because the statute applies to transactions involving goods and services, not real estate. They are unlikely to succeed on their claim for promissory estoppel because they did not allege, and did not present any evidence of, a specific promise by the defendants or of specific conduct by them in reliance on a promise by the

1 defendants. They are unlikely to succeed on their claim for wrongful foreclosure because plaintiffs
 2 have admitted their default on their loans. Under *Collins v. Union Fed. Sav. & Loan Ass'n*, 662 P.2d
 3 610, 623 (Nev. 1983), a plaintiff in default cannot state a claim for wrongful foreclosure. In
 4 addition, most plaintiffs' properties have yet to be sold, making the claim premature.

5 **Second**, the court finds that plaintiffs are not likely to suffer irreparable harm in the absence
 6 of preliminary relief. Under *Winter*, granting a "preliminary injunction based only on a possibility of
 7 irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary
 8 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."
 9 *Winter*, 555 U.S. at 22. The court finds that plaintiffs failed to make a clear showing of irreparable
 10 harm – they failed to explain why monetary damages cannot redress any loss, and provided no
 11 reason for the court to prevent the defendants from enforcing plaintiffs' deeds of trust.

12 **Third**, the court finds the balance of hardships tips against the issuance of an injunction
 13 because defendants are not receiving payments to which they are legally entitled as a result of the
 14 plaintiffs' default. Granting a preliminary injunction despite plaintiffs' default while plaintiffs
 15 continue to use and enjoy the properties would be inequitable.

16 **Fourth**, the court does not find that the public interest warrants preliminary relief.

17 In light of the court's findings, and for good cause appearing, **IT IS HEREBY ORDERED**
 18 that plaintiffs' motion for a preliminary injunction is **DENIED**.

19 DATED this 19th day of October, 2011.

20
 21 
 UNITED STATES DISTRICT JUDGE

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Submitted By:

AKERMAN SENTERFITT LLP

/s/ Jacob D. Bundick

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

JACOB D. BUNDICK, ESQ.

Nevada Bar No. 9772

400 South Fourth Street, Suite 450

Las Vegas, Nevada 89101

Attorneys for Defendants

*Bank of America Corporation; Bank of
America, National Association; Recontrust
Company, N.A., and Federal National
Mortgage Association*

Reviewed by:

CALLISTER + ASSOCIATES, LLC

/s/ Mitchell S. Bisson

MATTHEW Q. CALLISTER, ESQ.

Nevada Bar No. 1396

MITCHELL S. BISSON, ESQ.

Nevada Bar No. 11920

823 Las Vegas Blvd. So., 5th Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiffs